IN THE HIGH COURT OF UTTARANCHAL AT NAINIAL.

Writ Petition No. 6240 of 2001 (S/S)
(Old No. 22267/2000)

Chandra Pal Singh son of Sri Kishan Singh, resident of village Sansari, Post officeNehwalpali, district Almora. …… Petitioner.

Versus

1. Superintending of police (Karmik), Police Hezad Quarter, Allahabad.
2. Superintendent of police, district Champawat.

……Respondents.

Sri Siddharth Sah, learned counsel for the petitioner.
Standing counsel for the respondents.

HON'BLE RAJESH TANDON, J.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 14.3.2000 and further prayed for a writ of mandamus directing the respondents to appoint the petition on the post of constable.

Briefly stated, the father of the petitioner was constable in the department of U.P. Police and he died on 10.2.1999. On the compassionate ground, petitioner applied for his appointed for the post of constable. However, the petitioner was given the appointment as class IV employee (Ardali) on 26.7.1999. The petitioner made a representation to the authorities concerned for the appointment of constable on the ground that he is fully qualified to be appointed on the post of constable which is required under the rules.

The petitioner made another representation and the same was rejected on 14.3.2000 on the ground that the petitioner has already availed the opportunity of compassionate ground, therefore the same can not be given again and again. The petitioner has preferred the present writ petition and has also sought amendment in the writ petition by adding paragraph Nos. 16,17 and 18 to the following effect:

"16. That the petitioner has recently learned that S.P.Champawat has given appointment to Km. Geeta Rani D/O Late Sri Nar Singh Rithal R/O Village & Post Hajeli District Pithoragarh and Sri Praveen Singh Negi S/O Late Narendra Singh Negi(Cook) R/o Village Bantholi Post Sri Kot Khal Thana Satpuli District Pauri Garhwal under the Dying in Harness Rules on the post of Constable (M) in District Champawat though they were also only Intermediate pass like the petitioner.

17. That the petitioner is also Intermediate pass and as such he equally qualified to be appointed on the post of Constable (M) like the aforesaid km. Geeta Rani and Sri Praveen Singh Negi and since the respondents having not appointed the petitioner on the post of Constable (M) they have discriminated against the petitioner and hence their action is arbitrary and violative of Article 14 and 16 of the Constitution of India.

18. That is what incumbent upon the respondents to have appointed the petitioner on the post of Constable (M) like the aforesaid Km. Geeta Rani and Sri Praveen Singh Negi and having appointed the petitioner on the post of Ardali and having appointed Km. Geeta Rani and Sri Praveen Singh Negi on the post of Constable (M) the respondents have treated that equals as unequal for reasons best known to them which is violative Article 16 of the Constitution of India."

The grievance of the petitioner is that he possessed the requisite qualification for the appointment as a constable, therefore, he could not have been appointed on the Class IV and even if he has been appointed on class IV, the appointment should have been converted into a constable. A counter affidavit has been filed by the State. In paragraph No. 5 of the counter affidavit it has been stated that the petitioner did not possess essential qualification for the appointment of a constable. Para No.5 and 7 of the counter affidavit are quoted below:

"5. That in reply to the contents of para no. 5 of the writ petition it is stated that the petitioner did not possess essential qualification such as physical fitness, height etc. for appointment on the post of Constable (M) and hence he was not appointed on the post of Constable (M). He was, however, appointed on class IVth post (Ardali) on companionate grounds.

7. That the contents of para no. 7 of the writ petition are not correctly stated and therefore denied. The representation of the petitioner was rejected as he did file any domicile certificate. There is no documentary proof which shows that the petitioner has a domicile of hill district at the time of appointment."

It is well settled that compassionate appointment is not a source of recruitment and, therefore, once that appointment has been availed on the death of the bread earner the same can not be claimed again and again. It has been pointed out in the case of **Sushma Goasin Vs. Union of Inida (1989) 4 SCC 408** that the appointment under Dying in Harness Rules should be made as soon as possible. The relevant observations are quoted blow:

"The whole object of granting compassionate employment in thus to enable the family to tide over the sudden crisis. The object is not to give a member

of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to; be offered to the eligible member of the family."

As will appear that the bread earned died on 10.2.1999 and the petitioner was appointed on 26.7.1999 there has been no delay in the appointment having been made.

However, it is made clear that in case the petitioner is eligible for any other post in class III the same may be considered in accordance with the Rules and the promotional avenue be made available in accordance with the rules.

Subject to aforesaid observations regarding consideration, writ petition lacks merit is dismissed. No order as to costs.

29.8.2006 **(Rajesh Tandon, J.)**
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